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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/042,990	01/09/2002	Geza Bruckner	22740-1A	7684

24256 7590 11/12/2002

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EXAMINER
WEBMAN, EDWARD J

ART UNIT	PAPER NUMBER
1617	

DATE MAILED: 11/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)
10/042990	BRUCKNER
Examiner	**Group Art Unit**
WEBMAN	1617

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Peri d for Reply

SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE = THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

☒ Responsive to communication(s) filed on 6/26/02 .

☒ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle,* 1935 C.D. 1 1; 453 O.G. 213.

Disp siti n of Claims

☒ Claim(s) 3, 4, 6-8, 29-47 is/are pending in the application.

Of the above claim(s) 31-34, 38-47 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 3-4, 6-8, 30, 35-37 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Pri rity under 35 U.S.C. § 119 (a)-(d)

☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 11 9(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

*Certified copies not received: _____.

Attachment(s)

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 4

☐ Interview Summary, PTO-413

☐ Notice of Reference(s) Cited, PTO-892

☐ Notic of Informal Patent Application, PTO-152

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Other _____

Office Acti n Summary

Applicant's election with traverse of a composition comprising phytoestrogens and/or phytoandrogens, carnitine as a third component, cereal as a food base and genistein as a phytoestrogen in Paper No. 5 is acknowledged. The traversal is on the ground(s) that no burden has been shown. This is not found persuasive because No burden need be shown. Applicants can overcome the requirement by stating on the record that the species are not patentably distinguishable. However, a rejection over ~~the~~ one species shall then be applicable to all.

The requirement is still deemed proper and is therefore made FINAL.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 3-4, 6-8, 29-30, 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson et al. (WO 98/04248) in view of Fort (DE 29805782u1).

Jackson et al. teach a dietary supplement composition for postmenopausal women containing 1-50 mg phytoestrogen (abstract ; page 7, line 27; and page 27, line 30). Genistein is specified (page 26, line 5). The composition may be formulated with cereal (page 27, line 11). Phytoestrogen obtaining from soybean is disclosed (page 27, line 30; and claim 47).

However, Jackson et al. do not teach carnitine.

Fort teaches a dietary cereal containing carnitine (title, abstract).

It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to add carnitine to the composition of Jackson et al. to achieve the beneficial effect of supplementing the dietary needs for post-menopausal women.

As to the claimed weight percent, it is within the skill in the art to select optimal parameters such as ratios or weight percents of components in order to achieve a beneficial effect. See In re Boesch, 205 USPQ 215 (CCPA 1980). Therefore, the ratios or weight percents instantly claimed are not considered critical absent evidence showing unexpected and superior results.

Applicants argue that neither reference teaches applicants' treatment, however, intended ~~asks~~ uses are not considered patentable limitations in composition claims during prosecution before the USPTO.

Applicants also argue no motivation to combine because the primary reference concerns dietary supplements to reduce health risks and the secondary reference concerns dietary supplements to provide energy. However, the primary reference teaches lessening the risk of heart disease (page 10 lines 3-4) and the secondary reference teaches conversion of body fat into energy. It is well-known, even to the layman, that body fat is a risk factor in heart disease. Thus, it would be obvious to add an agent that promotes loss of body fat to improve a composition for reducing the risk of hearts disease.

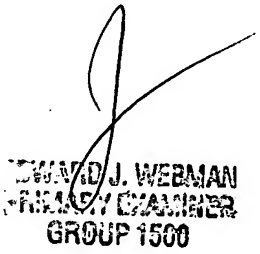
No claims allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward Webman whose telephone number is (703) 308-4432. The examiner can normally be reached on Monday to Friday 9 Am 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Padmanabhan can be reached on (703) 308-0570. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3592 for regular communications and (703) 305-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Webman/LR
October 22, 2002



THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.